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Giant Hidden Loophole

Senator Conrad's Medicare Insolvency Box

Yesterday, the Senate adopted Senator Conrad's Medicare "Lock-Box" amendment after a truncated debate. It's too bad the Senate acted so quickly, because the Conrad amendment suffers from two flaws that could actually undermine Medicare's solvency.

The Conrad Loophole

During debate, Senator Conrad argued that his amendment extended to Medicare the same protections already provided for Social Security under the Senate's budget rules. That is inaccurate. The Conrad amendment *looks* like it provides the same protections, but it includes a giant loophole. Section 301(i) of the Budget Act creates a 60-vote point of order against any resolution, bill, or amendment that reduces the Social Security surplus. The Section reads:

Social Security Point of Order. — It shall not be in order in the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution.

This Section precludes the Senate from adopting legislation that would reduce the Social Security surplus, including attempts to increase Social Security benefits. We all know Social Security faces long-term insolvency problems. The Act recognizes that increasing benefits for seniors today jeopardizes the benefits of future retirees.

Senator Conrad's amendment purports to extend this same protection to Medicare. It adds the following paragraph to Section 301(i):

Medicare. — It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would decrease the excess of the Federal Hospital Insurance Trust Fund outlays in any of the fiscal years covered by the concurrent resolution.

So far, so good. But then the Conrad amendment adds another sentence:

This paragraph shall not apply to amounts to be expended from the Hospital Insurance Trust Fund for purposes relating to programs within part A of Medicare as provided in law on the date of enactment of this paragraph.

That additional sentence defeats the entire purpose of the new paragraph. Medicare currently faces the same insolvency issues confronting Social Security, but unlike the protection allocated to Social Security, the Conrad amendment allows Medicare benefits to be bid up, accelerating the program's insolvency, and sacrificing the health care of future retirees. That's not a "lockbox." It's a gigantic loophole.

No Statutory Protection

The second flaw of the Conrad amendment is it provides no statutory protections to Medicare. Budget Act points of order can be waived, just as the Budget Act was waived to take up the Conrad amendment. That same process could be used to waive the new points of order included in the Conrad amendment. Budget Act points of order are useful — they raise the bar — but they are no guarantee against a future Senate acting unilaterally to set them aside.

Between the Conrad loophole and the ability of the Senate to waive Budget Act points of order, the Conrad amendment provides little if any real protection to Medicare beneficiaries.

Adjust the Debt Limit

If the Senate really wants to protect Medicare, it should adopt Senator Abraham's approach to adjust the statutory debt limits to reflect both the Social Security and Medicare Part A surpluses. By locking lower debt limits into law, the Abraham proposal would provide a real lockbox for Medicare, both for today and tomorrow's seniors. Congress cannot adjust these statutory limits on its own. Both Congress and the President must act.

Real Medicare protection requires real laws and a real firewall. By locking in the statutory debt limits, the Abraham approach would provide the Medicare trust fund with the protection it deserves.

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